

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Accusation
Against:**

Duane Merlin Buringrud, M.D.

Case No. 800-2016-020045

**Physician's and Surgeon's
Certificate No. G 34140**

Respondent

DECISION

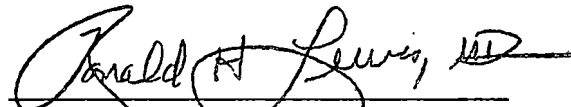
The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on May 30, 2019.

IT IS SO ORDERED April 30, 2019.

MEDICAL BOARD OF CALIFORNIA

By: _____


**Ronald H. Lewis, M.D., Chair
Panel A**

1 XAVIER BECERRA
Attorney General of California
2 MATTHEW M. DAVIS
Supervising Deputy Attorney General
3 LEANNA E. SHIELDS
Deputy Attorney General
4 State Bar No. 239872
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
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7 Facsimile: (619) 645-2061

8 *Attorneys for Complainant*

10 **BEFORE THE**
11 **MEDICAL BOARD OF CALIFORNIA**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

13 In the Matter of the Accusation Against:

14 **DUANE MERLIN BURINGRUD, M.D.**
15 **373 Juniper Avenue**
Carlsbad, CA 92008-8246

16 **Physician's and Surgeon's Certificate**
17 **No. G 34140,**

18 Respondent.

Case No. 8002016020045

OAH No. 2018071017

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

19
20 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
21 entitled proceedings that the following matters are true:

22 **PARTIES**

23 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
24 of California (Board). She brought this action solely in her official capacity and is represented in
25 this matter by Xavier Becerra, Attorney General of the State of California, by LeAnna E. Shields,
26 Deputy Attorney General.

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2. Respondent Duane Merlin Buringrud, M.D. (Respondent) is represented in this proceeding by attorney Robert W. Frank Esq., whose address is: 1010 Second Avenue, Suite 2500, San Diego, CA 92101.

3. On or about June 6, 1977, the Board issued Physician's and Surgeon's Certificate No. G 34140 to Respondent. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 8002016020045, and will expire on November 30, 2019, unless renewed.

JURISDICTION

4. On June 5, 2018, Accusation No. 8002016020045 was filed before the Board, and is currently pending against Respondent. A true and correct copy of Accusation No. 8002016020045 and all other statutorily required documents were properly served on Respondent on June 5, 2018. Respondent timely filed his Notice of Defense contesting the Accusation. A true and correct copy of Accusation No. 8002016020045 is attached hereto as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and fully understands the charges and allegations in Accusation No. 8002016020045. Respondent has also carefully read, fully discussed with counsel, and fully understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Having the benefit of counsel, Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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9. Respondent further agrees that if an accusation is ever filed against him before the Medical Board of California, all of the charges and allegations contained in Accusation No. 8002016020045 shall be deemed true, correct and fully admitted by respondent for purposes of any such proceeding or any other licensing proceeding involving respondent in the State of California.

10. Respondent agrees that his Physician's and Surgeon's Certificate No. G 34140 is subject to discipline, and he agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

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12. The parties agree that this Stipulated Settlement and Disciplinary Order shall be null and void and not binding upon the parties unless approved and adopted by the Board, except for this paragraph, which shall remain in full force and effect. Respondent fully understands and agrees that in deciding whether or not to approve and adopt this Stipulated Settlement and Disciplinary Order, the Board may receive oral and written communications from its staff and/or the Attorney General's Office. Communications pursuant to this paragraph shall not disqualify the Board, any member thereof, and/or any other person from future participation in this or any

1 other matter affecting or involving respondent. In the event that the Board does not, in its
2 discretion, approve and adopt this Stipulated Settlement and Disciplinary Order, with the
3 exception of this paragraph, it shall not become effective, shall be of no evidentiary value
4 whatsoever, and shall not be relied upon or introduced in any disciplinary action by either party
5 hereto. Respondent further agrees that should this Stipulated Settlement and Disciplinary Order
6 be rejected for any reason by the Board, Respondent will assert no claim that the Board, or any
7 member thereof, was prejudiced by its/his/her review, discussion and/or consideration of this
8 Stipulated Settlement and Disciplinary Order or of any matter or matters related hereto.

9 **ADDITIONAL PROVISIONS**

10 13. This Stipulated Settlement and Disciplinary Order is intended by the parties herein to
11 be an integrated writing representing the complete, final and exclusive embodiment of the
12 agreements of the parties in the above-entitled matter.

13 14. The parties agree that copies of this Stipulated Settlement and Disciplinary Order,
14 including copies of the signatures of the parties, may be used in lieu of original documents and
15 signatures and, further, that such copies shall have the same force and effect as originals.

16 15. In consideration of the foregoing admissions and stipulations, the parties agree the
17 Board may, without further notice to or opportunity to be heard by respondent, issue and enter the
18 following Disciplinary Order:

19 **DISCIPLINARY ORDER**

20 IT IS HEREBY ORDERED that DUANE MERLIN BURINGRUD, M.D.'s Physician's
21 and Surgeon's Certificate No. G 34140, shall be and is hereby publicly reprimanded pursuant to
22 California Business and Professions Code section 2227, subdivision (a)(4). This Public
23 Reprimand, which is issued in connection with Accusation No. 8002016020045, is as follows:

24 On or about July 14, 2013, Respondent committed repeated negligent acts in his care and
25 treatment of Patient A during the labor and delivery of her child, as more fully described in
26 Accusation No. 8002016020045.

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1 1. **CLINICAL COMPETENCE ASSESSMENT PROGRAM.** Within 60 calendar
2 days of the effective date of this Decision, Respondent shall enroll in a clinical competence
3 assessment program approved in advance by the Board or its designee. Respondent shall
4 successfully complete the program not later than six (6) months after Respondent's initial
5 enrollment unless the Board or its designee agrees in writing to an extension of that time.

6 The program shall consist of a comprehensive assessment of Respondent's physical and
7 mental health and the six general domains of clinical competence as defined by the Accreditation
8 Council on Graduate Medical Education and American Board of Medical Specialties pertaining to
9 Respondent's current or intended area of practice. The program shall take into account data
10 obtained from the pre-assessment, self-report forms and interview, and the Decision(s),
11 Accusation(s), and any other information that the Board or its designee deems relevant. The
12 program shall require Respondent's on-site participation for a minimum of three (3) and no more
13 than five (5) days as determined by the program for the assessment and clinical education
14 evaluation. Respondent shall pay all expenses associated with the clinical competence
15 assessment program.

16 At the end of the evaluation, the program will submit a report to the Board or its designee
17 which unequivocally states whether the Respondent has demonstrated the ability to practice
18 safely and independently. Based on Respondent's performance on the clinical competence
19 assessment, the program will advise the Board or its designee of its recommendation(s) for the
20 scope and length of any additional educational or clinical training, evaluation or treatment for any
21 medical condition or psychological condition, or anything else affecting Respondent's practice of
22 medicine. Respondent shall comply with the program's recommendations.

23 Determination as to whether Respondent successfully completed the clinical competence
24 assessment program is solely within the program's jurisdiction.

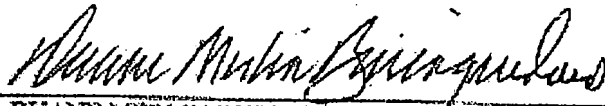
25 **ACCEPTANCE**

26 I have carefully read the above Stipulated Settlement and Disciplinary Order and, having
27 the benefit of counsel, enter into it freely, voluntarily, intelligently, and with full knowledge of its
28 force and effect on my Physician's and Surgeon's Certificate No. G 34140. I fully understand

1 that, after signing this stipulation, I may not withdraw from it, that it shall be submitted to the
2 Medical Board of California for its consideration, and that the Board shall have a reasonable
3 period of time to consider and act on this stipulation after receiving it. By entering into this
4 stipulation, I fully understand that, upon formal acceptance by the Board, I shall be publicly
5 reprimanded by the Board and shall be required to comply with all of the terms and conditions of
6 the Disciplinary Order set forth above. I also fully understand that any failure to comply with the
7 terms and conditions of the Disciplinary Order set forth above shall constitute unprofessional
8 conduct and will subject my Physician's and Surgeon's Certificate No. C 34140 to further
9 disciplinary action. I enter into this Stipulated Settlement and Disciplinary Order voluntarily,
10 knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical
11 Board of California.

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13 DATED:

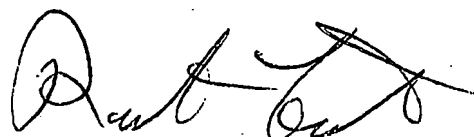
3/22/19


DUANE MERLIN BURINGRUD, M.D.
Respondent

16 I have read and fully discussed with Respondent Duane Merlin Buringrud, M.D. the terms
17 and conditions and other matters contained in the above Stipulated Settlement and Disciplinary
18 Order. I approve its form and content.

19
20 DATED:

3-25-19


ROBERT W. FRANK, ESQ.
Attorney for Respondent

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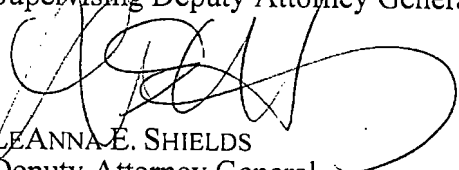
ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Medical Board of California.

Dated: 3.25.19

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
MATTHEW M. DAVIS
Supervising Deputy Attorney General


LEANNA E. SHIELDS
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 8002016020045

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO June 5 20 18
BY D. Richards ANALYST

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Attorneys for Complainant

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 8002016020045

DUANE MERLIN BURINGRUD, M.D.
373 Juniper Avenue
Carlsbad, CA 92008-8246

A C C U S A T I O N

Physician's and Surgeon's Certificate
No. G 34140,

Respondent.

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On or about June 6, 1977, the Medical Board issued Physician's and Surgeon's Certificate No. G 34140 to Duane Merlin Buringrud, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2019, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2227 of the Code states:

“(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

“(1) Have his or her license revoked upon order of the board.

“(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.

“(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.

“(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

“(5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

“(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1.”

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1 5. Section 2234 of the Code states, in pertinent part:

2 "The board shall take action against any licensee who is charged with
3 unprofessional conduct. In addition to other provisions of this article, unprofessional
4 conduct includes, but is not limited to, the following:

5 "(a) Violating or attempting to violate, directly or indirectly, assisting in or
6 abetting the violation of, or conspiring to violate any provision of this chapter.

7 "(b) Gross negligence.

8 "(c) Repeated negligent acts. To be repeated, there must be two or more
9 negligent acts or omissions. An initial negligent act or omission followed by a separate
10 and distinct departure from the applicable standard of care shall constitute repeated
11 negligent acts.

12 "(1) An initial negligent diagnosis followed by an act or omission medically
13 appropriate for that negligent diagnosis of the patient shall constitute a single negligent
14 act.

15 "(2) When the standard of care requires a change in the diagnosis, act, or
16 omission that constitutes the negligent act described in paragraph (1), including, but
17 not limited to, a reevaluation of the diagnosis or a change in treatment, and the
18 licensee's conduct departs from the applicable standard of care, each departure
19 constitutes a separate and distinct breach of the standard of care.

20 "..."

21 **FIRST CAUSE FOR DISCIPLINE**

22 **(Gross Negligence)**

23 6. Respondent Duane Merlin Buringrud, M.D., has subjected his Physician's and
24 Surgeon's Certificate No. G 34140 to disciplinary action under section 2227, as defined by 2234,
25 subdivision (b), of the Code, in that he committed gross negligence in his care and treatment of
26 Patient A¹ and her baby, as more particularly alleged herein after.

27 _____
28 ¹ Patient identity is withheld for patient privacy purposes.

1 7. On or about July 13, 2013, Patient A presented with reported spontaneous rupture of
2 membranes.

3 8. On or about July 14, 2013, care of Patient A was transferred to Respondent who was
4 the assigned Laborist at the time. When Respondent examined Patient A and determined she was
5 completely dilated and at zero station, Respondent ordered Patient A be prepared for a vaginal
6 delivery.

7 9. During the delivery process, Respondent used a vacuum delivery system in an attempt
8 to assist in the delivery of Patient A's baby. Respondent applied the vacuum to the baby's head in
9 three separate attempts which resulted in the vacuum popping off of the baby's head after each
10 attempt. Respondent instructed the Patient to continue pushing and left the delivery room.

11 10. Approximately 20 minutes later, Respondent returned and again attempted to use a
12 vacuum delivery system in an attempt to assist with the delivery of Patient A's baby. Respondent
13 applied the vacuum to the baby's head in three separate attempts which again resulted in the
14 vacuum popping off of the baby's head after each attempt.

15 11. Respondent then used forceps to guide the baby into a better position for delivery.

16 12. Then, Respondent used the vacuum delivery system again and delivered Patient A's
17 baby. Upon delivery, the baby was noted to have a subgaleal hemorrhage, diminished breath
18 sounds, pale appearance and metabolic acidosis.

19 13. Respondent committed gross negligence in his care and treatment of Patient A and her
20 baby, which included, but was not limited to, the failure to abandon his attempts to deliver Patient
21 A's baby by use of the vacuum delivery system after his first round of three failed attempts and his
22 decision to attempt to assist delivery using the vacuum delivery system for three additional
23 attempts rather than deliver the baby by cesarean section.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Repeated Negligent Acts)**

3 14. Respondent Duane Merlin Buringrud, M.D., has further subjected his Physician's and
4 Surgeon's Certificate No. G 34140 to disciplinary action under section 2227, as defined by 2234,
5 subdivision (c), of the Code, in that he committed repeated negligent acts, in his care and treatment
6 of Patient A and her baby, as more particularly alleged herein after:

7 15. Paragraphs 6 through 13, above, are hereby incorporated by reference and realleged as
8 if fully set forth herein.

9 16. Respondent committed negligence in his care and treatment of Patient A and her baby,
10 which included, but was not limited to, his decision to use forceps after the multiple failed vacuum
11 attempts to assist in the delivery of Patient A's baby.

12 **THIRD CAUSE FOR DISCIPLINE**

13 **(Violation or Violations of a Provision or Provisions of the Medical Practice Act)**

14 17. Respondent Duane Merlin Buringrud, M.D., has further subjected his Physician's and
15 Surgeon's Certificate No. G 34140 to disciplinary action under section 2227, as defined by 2234,
16 subdivision (a), of the Code, in that he committed a violation or violations of a provision or
17 provisions of the Medical Practice Act, in his care and treatment of Patient A and her baby, as
18 more particularly alleged in paragraphs 6 through 16, above, which are hereby incorporated by
19 reference and realleged as if fully set forth herein.

20 **PRAYER**

21 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
22 and that following the hearing, the Medical Board of California issue a decision:

23 1. Revoking or suspending Physician's and Surgeon's Certificate No. G 34140, issued to
24 Respondent Duane Merlin Buringrud, M.D.;

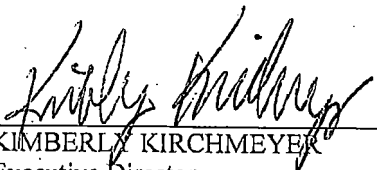
25 2. Revoking, suspending or denying approval of Respondent Duane Merlin Buringrud,
26 M.D.'s authority to supervise physician assistants and advanced practice nurses;

27 3. Ordering Respondent Duane Merlin Buringrud, M.D., if placed on probation, to pay
28 the Board the costs of probation monitoring; and

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4. Taking such other and further action as deemed necessary and proper.

DATED: June 5, 2018


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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